IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 654 of 2004 (M/S)

1. Smt. Bhagirathi Nayal,
W/o Shri Shiv Singh Nayal,
R/o 347/5, Gururani Compound,
Malla Gorakhpur, Haldwani,
District Nainital,

2. H.S. Nayal,
S/o Jagat Singh Nayal,
Secretary/ Manager, Hayat Ratan
Udhyan Sewa Sansthan, Sakhawatganuj.
Haldwani, District Nainital,

..... Petitioners

Versus

1. Smt. Vidya Devi, W/o Shri Chirangi Lal,
R/o 16 Quarter, Gaula Gate,
Tanakpur Road, Haldwani,
District Nainital,

2. Uttaranchal Government
through the Collector, Nainital,

3. Bank of Baroda, Branch Haldwani,
through Manager, Bank of Baroda,
Haldwani, Distt. Nainital ..... Respondents

Mr. Manoj Tiwari, learned counsel for the petitioners.
Mr. B.D. Kandpal learned Standing Counsel for State.
Mr. A.K. Joshi, learned counsel for respondent No. 3.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties.

2) This write petition is directed against the impugned orders dated 27.01.2004 (Annexure- 8 to the petition) passed by the trail court and order dated 03.07.2004 (Annexure- 9 to the writ petition) Passed by the learned appellate court. It appears that a suit No. 83 of 1997 was instituted against the defendants (petitioners), which was decreed on 28th October, 1998. The

execution proceedings started vide execution case No. 05 of 1999. Defendants (petitioners) moved an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (For short hereinafter referred as 'Code") in the year 2001. Learned trail court after hearing the parties rejected the application under Order IX Rule 13 of the Code and Refused to condone the delay in moving the same. An appeal was preferred against said order (Misc. civil appeal No. 02 to 2004) before the District Judge, Nainital. The learned lower appellate court also dismissed the same, after hearing both the parties.

3) Learned counsel for the petitioners submitted that they had no knowledge of the suit. They drew my attention to the affidavit filed before the trail courts as well as before this Court, in which it has been stated that they had no knowledge of the suit. However, the same does not appear to be true. Learned trail court as well as learned lower appellate court as is clear from their order found that the defendants, who moved application for setting aside ex-parte decree, in suit was were served personally. Order dated 28.10.1998 in suit No. 83 of 1997 shows that defendants Nos. 2, 3 and 4 were personally served with summons. If, even in the case of personal service, the Courts start taking it to be a ground of non having knowledge of the suit then anyone at any point of time can bring application under Order IX Rule 13 of the Code by giving go bye to the provisions of the Limitation Act, 1961. It is not the spirit of the law. Therefore, the petition is devoid of merits and is accordingly dismissed.

(Prafulla C. Pant, J.)

Dt.18.12.2004
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